STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0618

Benjamin Menier, a minor, by and through
Robin Menier as parent and natural guardian,
Appellant,

vs.

The Cincinnati Insurance Company,
Respondent,

Alliance Insurance Advisors Agency, LLC.,
Defendant.

Filed December 15, 2025
Affirmed
Wheelock, Judge

Hennepin County District Court
File No. 27-CV-22-12944

Chuck Slane, TSR Injury Law, Bloomington, Minnesota (for appellant)

Stephen M. Warner, Rakiah B. Adams, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for respondent)

Mary E. Eliasen, Penn, Kestner & McEwen, PLLC, Inver Grove Heights, Minnesota (for amicus curiae Minnesota Association for Justice)

Considered and decided by Bentley, Presiding Judge; Wheelock, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant insured challenges the district court's grant of summary judgment to respondent insurer, arguing that the district court erred in not applying the reasonable-expectations doctrine to a reducing clause when interpreting an insurance policy. We affirm.

FACTS

Robin Menier brings this appeal on behalf of her child, appellant Benjamin Menier. The facts as described below are not in dispute. Benjamin was a passenger in his father's vehicle when it was involved in a traffic collision with another vehicle and driver. Benjamin sustained serious injuries as a result of the collision and was hospitalized for several months with a skull fracture and traumatic brain injury.

Sometime before the collision, the family had purchased an umbrella insurance policy[1] from respondent The Cincinnati Insurance Company (Cincinnati). In addition to other coverage under the umbrella policy, Robin purchased $1 million in coverage under an excess uninsured- and underinsured-motorist coverage endorsement (UIM endorsement).[2]

---

[1]An "umbrella policy" typically requires the insured to carry underlying insurance. The umbrella policy then provides an "umbrella" over this underlying coverage in which the insurance company agrees to pay the part of a claim that exceeds the limits of the underlying coverage up to the limit of the umbrella policy. *See Jostens, Inc. v. Mission Ins. Co.*, 387 N.W.2d 161, 165 (Minn. 1986) (explaining umbrella-policy coverage).

[2]As indicated in the full name of the endorsement, the umbrella policy contains both uninsured-motorist (UM) and underinsured-motorist (UIM) coverage. However, because

Liability claims were asserted against Benjamin's father as the driver of the vehicle in which Benjamin was injured and against the other driver involved in the collision. For claims against Benjamin's father, Cincinnati paid Benjamin the underlying policy's liability limit of $100,000 plus $500,000 under the umbrella policy. For claims against the other driver, who was insured with a different insurance carrier, that carrier paid Benjamin that underlying policy's liability limit of $250,000 plus $1 million from the other driver's umbrella policy.

Benjamin then sought coverage under the $1 million UIM endorsement, but Cincinnati denied the claim based on the reducing clause in the UIM endorsement, reasoning that, because the liability payments already made by Cincinnati and the other driver's insurance to Benjamin exceeded the $1 million coverage limit, the amounts payable under the UIM-endorsement coverage were reduced to zero.

Benjamin brought suit against Cincinnati, asserting a breach-of-contract claim and seeking a declaratory judgment that the UIM endorsement was not subject to reduction and should be paid out at the $1 million coverage limit. Cincinnati moved for summary judgment on the ground that the reducing clause was unambiguous and that, therefore, the plain language of the policy applied to reduce the amount available under the UIM-endorsement coverage.

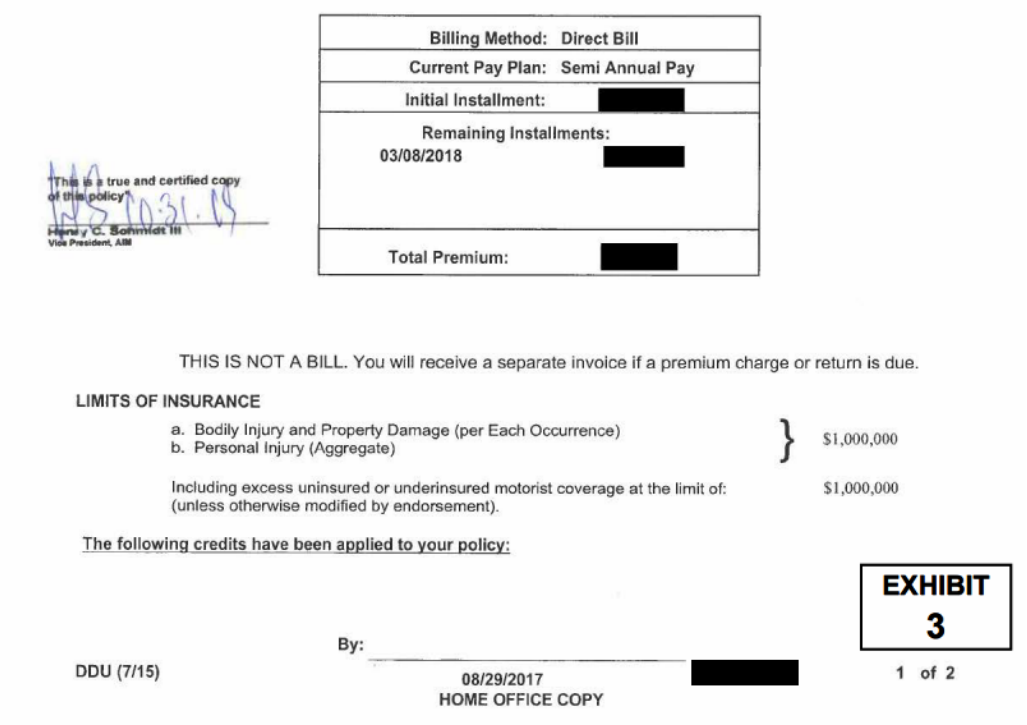
In response, Benjamin argued that the insurance policy should be interpreted according to the reasonable-expectations doctrine set forth in *Atwater Creamery Co. v.*

---

no person involved in the collision was uninsured, in this opinion, we discuss only the UIM coverage in the endorsement.

Western National Mutual Insurance Co., 366 N.W.2d 271 (Minn. 1985), and *Carlson v. Allstate Insurance Co.*, 749 N.W.2d 41 (Minn. 2008). Benjamin argued that the policy was intentionally unclear and that it was reasonable for an insured to believe the $1 million limit in the UIM endorsement would not be subject to reduction. Benjamin also pointed to Cincinnati's marketing materials, which did not explain the reducing clause and referenced a Minnesota statute that did not apply to the policy, to demonstrate that the Meniers had a reasonable expectation that no reduction would occur and that the UIM endorsement would provide additional coverage in the amount of $1 million.

The declarations section of the umbrella policy spans two pages; the relevant portion of which is pictured below:



"This is a true and certified copy of this policy"
Henry C. Schmidt III
Vice President, AIM

Billing Method:	Direct Bill
Current Pay Plan:	Semi Annual Pay
Initial Installment:	[redacted]
Remaining Installments: 03/08/2018	[redacted]
Total Premium:	[redacted]

THIS IS NOT A BILL. You will receive a separate invoice if a premium charge or return is due.

LIMITS OF INSURANCE

a. Bodily Injury and Property Damage (per Each Occurrence) b. Personal Injury (Aggregate)	$1,000,000
Including excess uninsured or underinsured motorist coverage at the limit of: (unless otherwise modified by endorsement).	$1,000,000

The following credits have been applied to your policy:

EXHIBIT 3

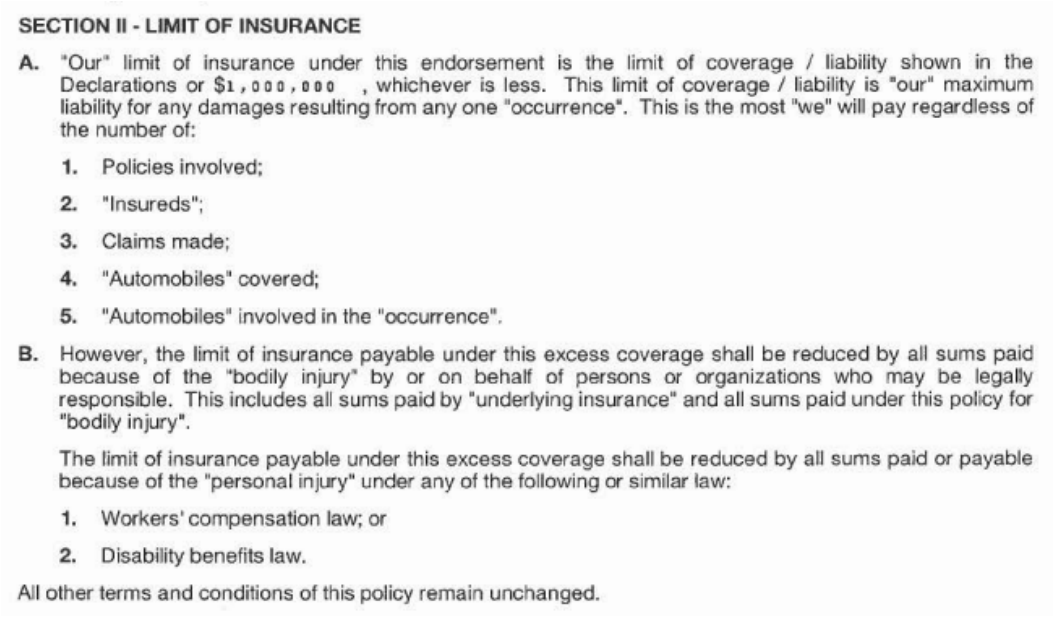
By: [redacted]

DDU (7/15) 08/29/2017 HOME OFFICE COPY 1 of 2

Following the declarations section, the first page of the policy includes a "quick reference index" of the page numbers on which different sections of the policy begin. The

final line states "ENDORSEMENTS, if any, will be attached to this policy and follow the last page." The policy is 16 pages long, and the UIM endorsement follows the last page.

The endorsement page of the policy is pictured below:



SECTION II - LIMIT OF INSURANCE

A. "Our" limit of insurance under this endorsement is the limit of coverage / liability shown in the Declarations or $1,000,000 , whichever is less. This limit of coverage / liability is "our" maximum liability for any damages resulting from any one "occurrence". This is the most "we" will pay regardless of the number of:

1. Policies involved;
2. "Insureds";
3. Claims made;
4. "Automobiles" covered;
5. "Automobiles" involved in the "occurrence".

B. However, the limit of insurance payable under this excess coverage shall be reduced by all sums paid because of the "bodily injury" by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid by "underlying insurance" and all sums paid under this policy for "bodily injury".

The limit of insurance payable under this excess coverage shall be reduced by all sums paid or payable because of the "personal injury" under any of the following or similar law:

1. Workers' compensation law; or
2. Disability benefits law.

All other terms and conditions of this policy remain unchanged.

The district court granted Cincinnati's motion for summary judgment, determining that the UIM endorsement was unambiguous and reduces available coverage to zero and that Benjamin failed to demonstrate that the reasonable-expectations doctrine should apply.

Benjamin appeals.

DECISION

Benjamin argues that the district court erred by declining to apply the reasonable-expectations doctrine to its enforcement of the UIM endorsement's reducing clause on summary judgment for three reasons: (1) the reducing clause is ambiguous and was hidden in the policy; (2) Cincinnati's marketing materials were misleading because they did not accurately describe the product; and (3) the rule established in *Canadian Universal Insurance Co. v. Fire Watch, Inc.*, 258 N.W.2d 570 (Minn. 1977), which is the

basis for Minnesota's reasonable-expectations doctrine, is not limited to renewals of an insurance policy but also applies to endorsements such as the UIM endorsement here.

Summary judgment is appropriate when "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). Evidence is viewed "in the light most favorable to the party against whom summary judgment was granted." *Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013) (quotation omitted). The interpretation of an insurance policy "is a legal question subject to de novo review." *King's Cove Marina, LLC v. Lambert Com. Constr. LLC*, 958 N.W.2d 310, 316 (Minn. 2021) (quoting *Latterell v. Progressive N. Ins. Co.*, 801 N.W.2d 917, 920 (Minn. 2011)).

I. The district court did not err by determining that the reasonable-expectations doctrine did not apply.

"[I]n certain limited situations," the reasonable-expectations doctrine permits courts to depart from "the literal terms and conditions of [an insurance] policy" in order to "protect the reasonable expectations of the insured with respect to coverage." *W. Bend Mut. Ins. Co. v. Allstate Ins. Co.*, 776 N.W.2d 693, 701 (Minn. 2009). First recognized in *Atwater Creamery*, the reasonable-expectations doctrine is closely related to the doctrine of contract adhesion. 366 N.W.2d at 277. The reasonable-expectations doctrine takes into account

the lack of insurance expertise on the part of insureds and the recognized marketing techniques of insurance companies and ensures that "[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations." *Id.* (quotation omitted). After experiencing a burglary, the plaintiff in *Atwater Creamery* filed a claim under its burglary policy, which the insurance company denied because there were no visible marks of entry and the definition of "burglary" in Atwater's policy required visible marks. *Id.* at 274. The supreme court determined that Atwater reasonably expected that its burglary insurance policy would cover the burglary that occurred. *Id.* at 279.

Since *Atwater Creamery*, the supreme court has said it is unwilling to expand the doctrine beyond use as a tool for resolving ambiguity or correcting extreme situations in which a party's coverage is significantly different from what the party reasonably believes they have paid for and in which the only notice is in an obscure and unexpected provision. *Carlson*, 749 N.W.2d at 49. "[I]n the absence of an ambiguity, a hidden major exclusion, or other special circumstances, the doctrine of reasonable expectations is inapplicable." *Frey v. United Servs. Auto. Ass'n*, 743 N.W.2d 337, 343 (Minn. App. 2008).

An insured asserting that the doctrine should supersede the actual policy language must point to facts or circumstances that, "despite the clear import of the exclusion, would justify a reasonable expectation of coverage." *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 311-12 (Minn. 1989). The doctrine does not eliminate the insured's obligation to read the policy; rather, it holds an insured only to a reasonable understanding of that policy. *Id.*

at 311. In short, the doctrine asks whether the insured's expectation of coverage is reasonable given all the facts and circumstances. *Id.*

Consistent with *Carlson*, to determine whether the reasonable-expectations doctrine applies here, we first consider whether the policy is ambiguous, and then whether the facts represent "an extreme situation" in which coverage is significantly different than what the Meniers reasonably believed and in which the only notice they had was an obscure and unexpected provision. 749 N.W.2d at 49.

A. The UIM endorsement is not ambiguous.

Policy language is ambiguous if it is susceptible to two or more reasonable interpretations, and if it is ambiguous, any ambiguity is resolved in favor of the insured. *Midwest Fam. Mut. Ins. Co. v. Wolters*, 831 N.W.2d 628, 636 (Minn. 2013). But policy endorsements and exclusions "must be construed in terms of the entire contract, and in such a way, if possible, to give effect to all provisions." *Gen. Mills, Inc. v. Gold Medal Ins. Co.*, 622 N.W.2d 147, 151 (Minn. App. 2001) (citing *Bobich v. Oja*, 104 N.W.2d 19, 24 (Minn. 1960)), *rev. denied* (Minn. Apr. 17, 2001). When the language of an insurance policy is clear and unambiguous, reviewing courts interpret the policy according to the plain, ordinary sense. *Carlson*, 749 N.W.2d at 45. "Words not defined in the policy must be given their plain and ordinary meaning." *Walker v. State Farm Fire & Cas. Co.*, 569 N.W.2d 542, 544 (Minn. App. 1997) (quotation omitted), *rev. denied* (Minn. Dec. 22, 1997).

Here, the reducing clause is located on a page titled, "EXCESS UNINSURED AND UNDERINSURED MOTORISTS COVERAGE ENDORSEMENT (MINNESOTA)."

The page consists of two sections; the second section contains the reducing clause. The full text of the provision under SECTION II—LIMIT OF INSURANCE, subsection B, reads as follows:

> However, the limit of insurance payable under this excess coverage shall be reduced by all sums paid because of the "bodily injury" by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid by "underlying insurance" and all sums paid under this policy for "bodily injury[.]"

Benjamin argues the policy is ambiguous because the first sentence of subsection B says those "who may be legally responsible" and does not clarify who decides who may be legally responsible. However, he does not provide an alternative reasonable interpretation for the provision. *See Wolters*, 831 N.W.2d at 636 (stating that policy language "is ambiguous if it is susceptible to two or more reasonable interpretations"). It appears that there is only one reasonable interpretation of the provision—that the UIM-endorsement coverage will be reduced by payments from those who may be legally responsible for the injury. In this case, that means Benjamin's coverage is reduced by payments to Benjamin that were made by Cincinnati for claims against Benjamin's father and by the other driver's insurance carrier for claims against that driver.

Benjamin also argues that the second sentence of subsection B, which says, "[t]his includes all sums paid by 'underlying insurance' and all sums paid under this policy for 'bodily injury,"' modifies the prior sentence and that, therefore, subsection B can only be reasonably read to say that the limit would be reduced only by payments made by

Cincinnati and cannot include payments made by the other driver's insurance carrier. This reading is not reasonable.

"Include" is defined as "[t]o contain or take in as a part, element, or member." *The American Heritage Dictionary of the English Language* 888 (5th ed. 2011). *The American Heritage Dictionary* also includes a note on usage that states, "[t]he word *include* generally suggests that what follows is a partial list, not an exhaustive list, of the contents of what the subject refers to." *Id.* Accordingly, we discern that "includes" as used in the policy is not limited to payments from Cincinnati pursuant to the underlying insurance and the umbrella policy; it also encompasses payments made by others who may be legally responsible—in this case, the other driver and that driver's insurance carrier.[3] We therefore conclude that the district court did not err in determining the policy was not ambiguous.

[3] Amicus curiae point to Wisconsin caselaw to persuade us to adopt rules requiring that insurers clearly set forth in a UIM policy or endorsement that an insured is purchasing a fixed level of coverage that will be arrived at by combining payments made from all sources, so as to avoid the implication that a policy limit is always an attainable payment. *Badger Mut. Ins. Co. v. Schmitz*, 647 N.W.2d 223, 231 (Wis. 2002) (recognizing that a "reasonable insured might not understand, intuitively, the scope of his or her UIM coverage"). We observe that we are an error-correcting court without authority to change the law. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) ("The function of the court of appeals is limited to identifying errors and then correcting them."); *LaChappelle v. Mitten*, 607 N.W.2d 151, 159 (Minn. App. 2000), *rev. denied* (Minn. May 16, 2000); *see also Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435, 439-40 (Minn. App. 2005) ("Although these concerns are not without merit, we are bound to follow Minnesota Supreme Court precedent."), *rev. denied* (Minn. June 14, 2005). The authority to create new law rests not in this court but in the legislature and supreme court. *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987).

B. The reducing clause was not obscure and unexpected.

A reducing clause is not obscure if it appears in plain language, under an appropriate heading, and in reasonably sized text. *Johnson v. Cummiskey*, 765 N.W.2d 652, 662 (Minn. App. 2009). When a reducing clause lies within an expected section of the policy, it is not hidden. *Frey*, 743 N.W.2d at 343 (determining that, when a policy exclusion lies within the "exclusion" section of a policy, it is not hidden); *cf. Atwater Creamery*, 366 N.W.2d at 277 (determining that, in a burglary policy, a major exclusion to burglary that was located within the policy's definition of burglary was hidden).

The reasonable-expectations doctrine does not relieve the insured of their responsibility to read the policy, and at the same time, it does not hold the insured to an unreasonable level of understanding of the policy. *Hubred*, 442 N.W.2d at 311. Not being verbally informed of a provision does not, standing alone, free the insured of the responsibility of having to read it. *Id.* at 312.

Benjamin argues that Cincinnati hid the reducing clause and describes the policy as "a scavenger hunt." The policy declarations page states, under "LIMITS OF INSURANCE," that the excess UIM endorsement has a limit of $1 million "unless otherwise modified by endorsement." Following the declarations, the next page states, "ENDORSEMENTS, if any, will be attached to this policy and follow the last page." This is an accurate statement. The UIM endorsement appears on a single page, and the reducing clause is contained in section two under the heading, "LIMIT OF INSURANCE."

As such, the reducing clause is not hidden because it is located in the "limit of insurance" section of the UIM endorsement. *See Frey*, 743 N.W.2d at 343. It also has an

appropriate heading and is written in text that is reasonably sized. *See Cummiskey*, 765 N.W.2d at 662. The record evidence does not support the assertion that the reducing clause was hidden in the policy.

Benjamin also argues that the declarations and "quick reference index" make the policy so confusing that a reasonable insured could not navigate it and that the phrase "unless otherwise modified by endorsement" is unclear because the policy was modified by endorsement. It is undisputed that the Meniers did not actually go to the endorsement page to read it. On these facts, it cannot be said that the district court erred in determining that the phrase "unless otherwise modified by endorsement" is not confusing and that a reasonable insured would have read the endorsement. *See Hubred*, 442 N.W.2d at 311.

Next, Benjamin asserts the district court erred by failing to consider that Cincinnati intentionally misleads consumers with its marketing materials. Benjamin points to a document created by Cincinnati that summarizes the option to add an excess UIM endorsement to an umbrella policy. He highlights that the language in the document says that such an endorsement can provide "another layer of defense," yet the document fails to mention the method used to calculate limits.[4]

[4] In response, Cincinnati asserts the materials "have no place in this Court's interpretation of the challenged policy language" because the policy is an integrated contract. We generally do not rely on extrinsic evidence to establish contractual ambiguity. *Wilcox v. State Farm Fire & Cas. Co.*, 874 N.W.2d 780, 784 (Minn. 2016). However, "in certain limited situations," the reasonable-expectations doctrine permits courts to depart from "the literal terms and conditions of [an insurance] policy" in order to "protect the reasonable expectations of the insured with respect to coverage." *W. Bend Mut. Ins. Co.*, 776 N.W.2d at 701. And because, when determining whether the expectations of the insured are reasonable, we consider all of the facts and circumstances, we conclude that we may consider the materials. *See Hubred*, 442 N.W.2d at 311.

Contrary to his assertion, the district court considered the marketing materials and determined that "[t]he marketing materials outside the actual policy do not create reasonable expectations here that are thwarted by the policy. The marketing materials simply refer to the excess []UIM coverage providing an extra layer of protection. That remains true." We agree with the district court because, if the coverage available to Benjamin had been insufficient to reach the $1 million umbrella policy limit, coverage would have been available to him under the UIM endorsement.

Accordingly, the district court did not err in determining that the marketing materials did not create a reasonable expectation that was thwarted by the policy's unambiguous language.[5]

II. *Canadian Universal* applies only to reductions in coverage.

Benjamin urges this court to apply the holding in *Canadian Universal* to the facts of this case. In *Canadian Universal*, the supreme court held that, when an insurer substantially reduces prior coverage by policy renewal or endorsement to an existing

[5] Benjamin also asserts that we should take into consideration whether the general public is aware of the type of insurance provision at issue here—a reducing clause. Public awareness of types of insurance provisions was a factor the supreme court considered in *Atwater Creamery*. 366 N.W.2d at 278. He argues that consumers would expect the UIM endorsement of the umbrella policy to conform to the Minnesota Automobile Insurance No-Fault Act's requirements for underlying UIM coverage. The No-Fault Act requires an insurance policy to include a minimum of $25,000 in UIM coverage, which must be calculated as "damages less paid" rather than limits-less-paid. Minn. Stat. § 65B.49, subd. 3(a)(1) (2024); *Cummiskey*, 765 N.W.2d at 656. Cincinnati does not dispute that the reducing clause in the UIM endorsement is limits-less-paid coverage and would be unenforceable if it applied to underlying UIM coverage mandated by the No-Fault Act, which it does not. However, to the extent that this factor is still relevant post-*Carlson*, as we did in *Frey*, we decline to undertake the speculative task of assaying public awareness of what is expected in an insurance policy. *Frey*, 743 N.W.2d at 343.

policy, the insurer must provide the insured written notice of the change in coverage. 258 N.W.2d at 575. If the insurer does not provide that written notice, the reduction is void and coverage is determined in accordance with the terms of the original policy. *Id.*

In *Copiskey v. IMT Insurance Co.*, we recently rejected a similar argument. No. A22-1068, 2023 WL 2359028, at *2 (Minn. App. Mar. 6, 2023), *rev. denied* (Minn. May 31, 2023).[6] The appellant in *Copiskey* argued that an endorsement was a substantial reduction because the declarations page referred to a $100,000 coverage limit but the endorsement contained a provision that limited coverage to $30,000 in some circumstances. *Id.* at *3. This court concluded that *Canadian Universal* did not apply because the provision at issue was contained within the policy from the beginning of coverage and therefore could not be a substantial reduction in coverage. *Id.* at *2-3. In the decision, we declined the invitation to expand the rule in *Canadian Universal* because the requirement of written notice applies "only when the insurer reduces an insured's existing coverage[, and] imposing such a requirement as a matter of public policy would exceed our role." *Id.* at *3 (citing *Palmer*, 413 N.W.2d at 286).

Because the umbrella policy at issue here, including the UIM endorsement, was a new policy, there was no substantial reduction in coverage and *Canadian Universal*'s notice requirement does not apply. We again decline to expand *Canadian Universal* to facts that do not involve a substantial reduction in coverage.

Affirmed.

[6] Nonprecedential opinions are not binding on this court but may be persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).